The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Commerce Committee

BILL: SB 350

INTRODUCER: Senators Haridopolos and Detert

SUBJECT: Entertainment industry economic development

DATE: March 10, 2009 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh	Cooper	CM	**Favorable**
2.			FT	
3.			TA	
4.			WPSC	
5.				
6.				

I. Summary:

Florida offers a film and entertainment incentive that reimburses production companies a percentage of certain expenditures related to the activities of filming movies or commercials, or creating video games. The incentive is paid after the production is complete. The incentive is subject to legislative appropriation; for FY 2008-2009, the incentive totaled $11.89 million, including $6.89 million in carry-forward funds.

In recent years, as other states have implemented more-generous incentives to lure film and other entertainment productions, Florida has amended its incentive law, in s. 288.1254, F.S., to try and remain competitive. SB 350 is Florida's latest attempt to attract a greater share of the industry.

SB 350 converts Florida's existing film and entertainment incentive from a cash reimbursement of qualified expenditures, to an uncapped, transferrable credit against sales and corporate income taxes.

The bill renames the categories of film and entertainment productions and adjusts the percentages of qualified expenditures on which the tax credit amounts will be based. Specifically:

- Currently, each production category is allocated a percentage share of the overall cash incentive. SB 350 removes the category shares because they are not applicable to a tax credit incentive program without a cap.
- The amount of the tax credit incentive will be based on 20 percent of qualified expenditures for general film productions (up from the current 15 percent) and for digital media (up from the current 10 percent). There is no cap on the amount of incentive that individual productions in these two categories can receive.

- For commercials and music videos, the tax credit is reduced from 15 percent of qualified expenditures to 10 percent.

Under SB 350, the basic application and approval process is similar to that in current law: the Governor's Office of Film and Entertainment (OFE) manages the incentive program, reviews applications, and makes recommendations for approval to the Governor's Office of Tourism, Trade, and Economic Development (OTTED), which makes the final decision to award the incentives and in what amount. New to the process is the Department of Revenue (DOR), which will assist in the implementation of the program by tracking the credits, conducting audits, and recovering state funds in cases of fraud.

SB 350 takes effect July 1, 2009.

II. Present Situation:

Background on Florida's Entertainment Industry Financial Incentive Program
In 2003, the Legislature created the Entertainment Industry Financial Incentive Program.[1] The program's dual purposes are to:

- Promote Florida as a site for filming, creating, or producing movies, television series, commercials, digital media and other types of entertainment productions, and to
- Sustain and develop the state's entertainment workforce, studios, and other related infrastructure.

The incentive program is administered by OFE, subject to the policies and oversight of OTTED. Serving as an advisory board to OTTED and OFE is the Florida Film and Entertainment Advisory Council, consisting of 17 members appointed by the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Over the years, the incentive program has been amended. Currently, the program provides what amounts to a reimbursement of a certain percentage of qualified wage, equipment, and other expenditures, based on the type of production. There are three types, or "queues," of eligible productions: general production (which includes two subcategories), Independent Florida Filmmaker, and digital media products. Eighty-five percent of the state incentive funding is dedicated to the general production queue, 5 percent is dedicated to the Independent Florida Filmmaker Queue, and 10 percent is dedicated to the digital media production queue.

As the chart on page 3 indicates, two types of bonus incentives are available, depending on the type of production. General productions that film between June 1 and November 30, the so-called "hurricane season," are eligible for an additional "off-season" reimbursement of 5 percent of their qualified expenses. They also receive the incentive if they complete less than 75 percent of their principle photography due to a hurricane or tropical storm.

All certified productions are eligible for an additional reimbursement of 2 percent of the qualified expenses if the state's Film and Entertainment Commissioner, as advised by the Florida Film and Entertainment Advisory Council, determines they are "family friendly." This

[1] Section 288.1254, F.S.

determination is based on an interview with the director and a review of the script. “Family friendly” is defined as productions that:

- Have cross-generational appeal;
- Are considered suitable for viewing by children aged 5 years or older;
- Are appropriate in theme, content and language for a broad family audience;
- Responsibly resolve issues raised in the film; and
- Do not include any act of smoking, sex, nudity, or vulgar or profane language.

Salient Characteristics of Florida’s Entertainment Industry Incentive Program Queues

Attribute	Gen.Production Queue A: movies, TV series documentaries, etc.	Gen. Production Queue B: commercials & music videos	Independent Fla. Filmmaker Queue	Digital Media
Minimum amount of qualified expenses Needed	$625,000	$100,000 per commercial or video and exceeds $500,000 combined threshold in a fiscal year	At least $100,000, but not more than $625,000 in qualified expenses	$300,000
Amount of basic incentive	15% of qualified expenses, up to $8 million	15% of qualified expenses, up to $500,000	15% of qualified expenses, up to $93,750	10% of qualified expenses, up to $1 million per project
Special criteria	-- Must make a “good faith effort” to use existing Fla. film infrastructure & services, when available. -- Only Fla. resident wages, goods & services are eligible for incentive.	-- Must make a “good faith effort” to use existing Fla. film infrastructure & services, when available. -- Only Fla. resident wages, goods & services are eligible for incentive.	-- Be a feature or a doc. at least 70 mins. long; -- Prove that 50% of its total financing is in escrow; -- Do all major post-production in Fla.; and -- Employ Floridians in at least 6 key jobs.[2]	-- Max 3 projects a year; -- Max $200,000 in wages paid per Florida employee; -- Only wages or salaries are considered qualified expenses
Eligible for 5% Off-Season Incentive?	Yes	Yes	No	No
Eligible for 2% Family-Friendly Incentive?	Yes	No	Yes	No

“Qualified expenditures” related to a film or entertainment production are the basis of the cash incentive, not the amount of state taxes a production entity has paid while in Florida. Current law defines qualified expenditures as production expenditures incurred by a qualified production in Florida for:

- Goods purchased or leased from, or services provided by, a vendor or supplier in this state which is registered with the Department of State or the Department of Revenue and which is doing business in this state. Eligible production goods and services include:

[2] The statute lists 8 key positions: writer, director, producer, director of photography, star or one of the lead actors, unit production manager, editor, and production designer.

  - Sound stages, back lots, production editing, digital effects, sound recordings, sets, and set construction;
  - Entertainment-related rental equipment, including cameras and grip or electrical equipment;
  - Meals, travel, and accommodations.
- Salary, wages, or other compensation paid to Florida residents, up to a maximum of $400,000 per resident for the general production queue and the independent Florida filmmaker queue and up to a maximum of $200,000 for the digital media queue.

Further, only qualified expenditures for "qualified productions" are eligible for the incentive cash. A qualified production must meet the requirements in s. 288.1254, F.S., plus two additional criteria:

- At least half of its production crew and below-the-line production crew [3] are Florida residents or students enrolled full time in a film- and entertainment-related course of study at a Florida university, and
- OFE determines that the production does not contain obscene content, as defined in s. 847.001(10), F.S.[4]

Additionally, for a qualified production involving an event, such as an awards show, the term "qualified expenditures" excludes expenditures solely associated with the event itself and not directly required by the production. The term also excludes expenditures prior to certification, with the exception of those incurred for a commercial, a music video, or the pickup of additional episodes of a television series within a single season.

Application and Award Process

OFE begins accepting incentive applications on July 1 of each fiscal year, and must review each application for completeness within 10 business days of receipt.

The completeness standards vary depending on the type of production. For example, for general productions that are films (Queue A), the application must include the script, screenplay or story boards; a synopsis; Florida Qualified Expenditures Budget; a shooting schedule; and an actor work schedule, if applicable. A digital media production must include with its application only a project synopsis, the Florida Qualified Expenditures Budget; and a detailed project production schedule.

The incentive is granted on a "first-come, first-served" basis per queue,[5] however, the state funds are not paid to the production entity until its receipts for the qualified expenditures are verified by an independent certified public accountant, who is licensed in Florida, reviewed and recommended for approval by OFE, and certified by OTTED. Sometimes, the incentive amount set aside for a production upon application is not supported by the verified documentation. In such cases, the excess incentive funds are awarded to the next certified production. There also

[3] "Below-the-line production crew" excludes actors, directors, producers, and writers.

[4] Pursuant to this section, "obscene means the status of material which: (a) The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest; (b) Depicts or describes, in a patently offensive way, sexual conduct as specifically defined herein; and (c) Taken as a whole, lacks serious literary, artistic, political, or scientific value. A mother's breastfeeding of her baby is not under any circumstance "obscene."

[5] Section 288.1254(4)(a), F.S.

have been years where the OFE did not award all of the appropriated funds because of disqualified expenditures, and because the timing of productions did not coincide with the state's fiscal year.[6]

OTTED has authority to adopt rules, and develop policies and procedures, to administer the incentive program. No rules have been promulgated. The application forms and procedures are available on the Office of Film and Entertainment's website.[7]

Entities that submit fraudulent applications in order to obtain incentive funds are liable for repayment of those funds and a penalty, up to double the incentive awarded, plus any criminal penalties the applicant might have to pay. Also, these entities are liable for reimbursement of costs incurred by the state in investigating and prosecuting the fraudulent claims. There is no explicit mention in s. 288.1254, F.S., of the Department of Revenue participating in auditing the incentive recipients or recovering the funds.

OFE is directed to submit an annual report each October 1 to the Governor, the President of the Senate, and the Speaker of the House of Representatives, that outlines the return on the state's investment of the incentive program, and the program's economic benefits to the state.

Economic Impact

A recent four-part economic impact study of Florida's film and entertainment industry[8] concluded that in 2007, film and entertainment-related spending accounted for:

- $17.9 billion, or 2.4 percent, of Florida's Gross State Product (GSP);[9]
- $8.5 billion in personal income;
- $498 million in tax revenue to Florida; and
- 207,800 jobs (direct and indirect).

The Hass Center study also indicated that for every $1 spent on a production within Florida, the state sees a return on investment of $1.60.[10]

According to OFE's annual reports,[11] the state's return on investment was 7:1 in FY 2005-06, 7.3:1 in FY 2006-2007, and 6.7:1 in FY 2007-2008.

In FY 2007-2008, there were 53 qualified productions (48 filmed productions and five digital media products) that spent $118.6 million in qualified expenditures, including $73.4 million in wages to 15,323 Florida workers and $44.4 million to Florida businesses.[12]

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[6] Section 3 of ch. 2007-125, L.O.F., provided for a two-year rollover of the $25 million appropriation for the film and entertainment incentive.

[7] See http://www.filminflorida.com. Last visited Feb. 16, 2009.

[8] "2008 Economic Assessment of the Florida Film & Entertainment Industry," prepared by the Haas Center for Business Research and Economic Development at The University of West Florida. Available at http://www.filminflorida.com/ifi/ea.asp. Last visited Feb. 18, 2009.

[9] Florida's total GSP (also known as Gross Domestic Product) in 2007 was estimated at $734.5 billion by the U.S. Bureau of Economic Analysis. See http://www.bea.gov/regional/gsp/. Last visited Feb. 18, 2009.

[10] Page 178 of previously cited "2008 Economic Assessment of the Florida Film & Entertainment Industry."

[11] On file with the Senate Commerce Committee.

[12] OFE spreadsheet on file with the Senate Commerce Committee.

So far in FY 2008-2009, productions applying for the incentive totaled 51; of those, 23 of those were certified and are still actively engaged. These productions anticipate spending about $83 million in Florida. Five other productions are on a waiting list.[13]

Funding history

Legislative appropriations for the film incentive have fluctuated over the years. Although enacted in 2003, the incentive program received its first legislative appropriation in FY 2004-2005, in the amount of $2.45 million. The incentive program received appropriations of $10 million in FY 2005-2006; $20 million in FY 2006-2007; $25 million in FY 2007-2008; and $5 million in FY 2008-2009.[14]

Other Entertainment Industry Tax Incentives in Florida

Entertainment industry qualified production companies are eligible for several exemptions from the sales and use tax. In 2000, the Legislature authorized qualified production companies to obtain a single certificate of exemption, which allows the companies to benefit from these exemptions by not having to pay tax at the point of sale, rather than by having to seek reimbursement of the tax. Qualified production companies are exempt from paying sales and use tax for the following:

- Lease or rental of real property — Exempts from tax the lease or rental of real property that is used as an integral part of an activity or service performed directly in connection with the production of a qualified motion picture (including photography, sound and recording, casting, location scouting, and the creation of special and optical effects).[15]
- Fabrication labor —Exempts fabrication labor from tax when a motion picture producer uses his or her own equipment and personnel to produce a qualified motion picture.[16]
- Production equipment —Exempts from tax the purchase or lease of motion picture and video equipment, and of sound recording equipment, used in Florida for motion picture or television production or for the production of master tapes or master records.[17]
- Master tapes — Exempts from tax the sale, lease, storage, or use in Florida of master tapes or records for sound recordings, master films, and master video tapes. [18]

The annualized estimated cost of these exemptions will be $72.1 million in FY 2008-2009, according to the 2008 Florida Tax Handbook.[19]

Entertainment Industry Financial Incentive Programs in Other States and Countries

Currently, 41 states have some combination of film and entertainment tax incentives.[20] The most common incentives are sales tax exemptions, offered by 25 states, and tax credits, offered by 21

[13] Ibid.
[14] The total available for FY 2008-2009 is $11.89 million, because the Legislature allowed carryforward from the previous fiscal year.
[15] Section 212.031(1)(a)9., F.S.
[16] Section 212.06(1)(b), F.S.
[17] Section 212.08(5)(f), F.S.
[18] Section 212.08(12), F.S.
[19] Pages 123-126 of report, which is prepared by the Legislature's Office of Economic & Demographic Research and the Florida Department of Revenue. Available at http://edr.state.fl.us/reports/taxhandbooks/taxhandbooks.htm.
[20] Page 176 of previously cited "2008 Economic Assessment of the Florida Film & Entertainment Industry."

states. Ten states offer both of those: Arizona, Connecticut, Georgia, Indiana, Massachusetts, New Jersey, New York, North Carolina, West Virginia, and Wisconsin.

California, which generates an estimated 65 percent of the U.S. film and television industry revenues,[21] until recently offered relatively few state incentives: a state sales tax exemption on the purchase or lease of post-production equipment, an exemption from the state hotel occupancy taxes, and free permits to film on state-owned properties. On Feb. 20, 2009, as part of an economic stimulus package, California Gov. Schwarzenegger signed legislation creating a 5-year, $500-million transferrable tax credit program for qualified expenditures of eligible film productions. For example, the tax credit is 20 percent of qualified expenditures for motion pictures, and 25 percent of qualified expenditures for television series and independent films. The California Film Commission[22] is developing regulations to implement the tax credit program, and expects that the first credits will be claimed in FY 2010-2011.

Florida and 16 other states offer rebates, which are structured in a variety of ways and at different levels of reimbursement. Several states' rebates are more generous than Florida's. For example:

- <u>Maryland</u> offers a rebate of up to 25 percent of the total direct costs incurred while filming on-location for qualifying film and television productions. To be eligible, production must incur at least $500,000 in total direct costs; at least 50 percent of the production's filming must occur in Maryland; and the production must have nationwide distribution. The state also offers an exemption from the state's sales tax for certain purchases or rentals.
- <u>Michigan</u> offers an uncapped 40-percent refundable tax credit on film production costs.[23] A production entity must register with the state and spend at least $50,000 to be eligible. A production entity can claim an extra 2 percent tax credit if filming is done in one of the 103 "Core Communities," as well as 30 percent of qualified employment expenditures.
- <u>New Mexico</u> offers a 25-percent rebate on all direct production expenditures, including wages paid to New Mexico residents, which are subject to taxation by the state.[24] There is no minimum spending required, no cap, and no sunset clause. Productions also can apply for a 0-percent loan for up to $15 million, in addition to the rebate. A third incentive is a sales tax exemption for film productions that cannot be combined with the rebate; typically this is used by companies filming commercial or public service announcements.

The use of financial incentives by states to attract the film and entertainment industry has become a topic of debate recently. For example, the Michigan Legislature last spring enacted a number of bills that boosted the state's film incentives, but by year's end, a bill was filed to cap the amount of credits that could be claimed each fiscal year. A November 2008 analysis by the Michigan Senate Fiscal Agency had indicated that by September 2008, nearly $150 million in film tax credits had been tentatively approved.[25] These productions were estimated to generate $26.6 million in new wages and sales tax revenues, resulting in a net loss of more than $122

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[21] See http://www.laedc.org/reports/Film-2005.pdf.
[22] See http://www.film.ca.gov/
[23] See http://www.michigan.gov/textonly/0,,7-248-46457---,00.html.
[24] See http://www.nmfilm.com/filming/incentives/.
[25] See http://www.legislature.mi.gov/documents/2007-2008/billanalysis/Senate/htm/2007-SFA-1535-A.htm.

million in state revenues. The bill failed, and has not been refiled for the Michigan Legislature's 2009-2010 session.

In New Mexico, two recently completed economic studies of that state's film incentives arrived at opposite conclusions about whether they are economically beneficial.[26] One study indicated that the incentives were generating a return on investment of 14.5 cents for every $1 the state rebated, but the other study calculated an ROI of $1.50 for every $1 in state rebates. Internationally, the United Kingdom, Australia, New Zealand, Canada, and Mexico offer a variety of incentives that include tax credits, rebates, and even grants to help pay production costs.[27]

III. Effect of Proposed Changes:

SB 350 substantially revises Florida's film and entertainment incentive program in s. 288.1254, F.S. The primary change is replacing the existing cash reimbursement incentive, which requires an annual legislative appropriation, with an uncapped, transferable tax credit program that expires in 5 years. However, most of the definitions and the incentive program administration remain the same as under current law.

The most significant changes are:

- The replacement of the cash incentive with the transferrable tax credits for qualified productions;
- An increase in the percentage amount of incentive (in this case, tax credits) that certain film productions and digital media productions receive based on their qualified expenditures;
- Deletion of a cap on the incentive amount that certain film productions and digital media productions can receive; and
- A reduction in the percentage amount of qualified expenditures that form the basis of the new incentive for commercials and music videos, from 15 percent to 10 percent. [*See chart on page 9*.]

Section 1 is a rewrite of the current s. 288.1254, F.S. It modifies several definitions, renames the categories of productions, replaces the cash incentive with a transferable tax credit, specifies a role for DOR, and authorizes additional rulemaking. Key features of the new tax credit incentive are:

- Tax credits are available for four different categories of qualified productions:
    - Qualified productions that aren't commercials, music videos, digital media, or independent films;
    - Qualified productions that are commercials or music videos;
    - Digital media productions; and
    - Independent Florida films.

[26] The two reports are available at the following web addresses:
http://nmfilm.com/locals/downloads/nmfilmCreditImpactAnalysis.pdf.
and http://www.nmlegis.gov/lcs/lfc/lfcdocs/film%20credit%20study%20TP&JP_08.pdf.

[27] See the Association of Film Commissioners International for an interactive map of film and entertainment incentives. See http://www.afci.org/incentives.htm.

- The tax credit program is uncapped, meaning there is no limit on how much in tax credits is available to be claimed each fiscal year.
- Tax credits can be applied against sales and use taxes (ch. 212, F.S.) and corporate income taxes (ch. 220, F.S.).
- The initial recipient of the tax credits must make an irrevocable selection of which types of taxes the credits will be applied to. This decision is binding upon the future transferee or purchaser of the credits.
- A certified production company may transfer its tax credits only once. Sales tax credits can be transferred to only one entity, but corporate income tax credits can be transferred to up four entities, in the same taxable year.
- There is no minimum face value, or minimum consideration, at which the credits can be transferred.
- Films that receive a tax credit must, at a minimum, include a "Filmed in Florida" logo at the end of the credits.
- The tax credit incentive program sunsets July 1, 2014, meaning no new credits can be awarded after that date unless the program is reenacted by the Legislature. However, credits can be carried-forward for 5 years, and transferred credits do not expire until 5 years after the transaction. This means that claims against sales or corporate taxes owed may continue to be filed with DOR until July 1, 2019.

SB 350 also revises several existing definitions, primarily to reflect the change in incentives, but there are two substantive changes. Specifically:

- Added to eligible "production expenditures" are the costs of computer software and hardware used exclusively in Florida for the production of digital media.
- For the purposes of the incentive, the maximum salary for a Florida resident involved in a production is increased from $400,000 to $1 million. However, the maximum salary that can be counted towards the incentive for a Florida resident working in a digital media production remains at $200,000.

The bill eliminates the phrase "queues," but retains in large part the four types of productions eligible for the tax credit incentive. Briefly:

- <u>Qualified production that isn't a commercial, music video, digital media project, or independent Florida film:</u> Must have at least $500,000 in qualified expenditures to be eligible for tax credits that equal 20 percent of its actual qualified expenditures. There is no cap on the amount of tax credits that this category of qualified production can earn.
- <u>A qualified production company that produces national or regional commercials or videos:</u> Must have a minimum $100,000 in qualified expenditures per commercial or music video <u>and</u> exceed a combined threshold of $500,000 for multiple commercials and/or music videos produced in a single fiscal year, is eligible for tax credits that equal 10 percent of its actual qualified expenditures, for a maximum of $500,000.
- <u>Qualified digital media production:</u> Must have a minimum $300,000 in total qualified expenditures to be eligible for tax credits that equal 20 percent of its actual qualified expenditures. For digital media productions, the only qualified expenditures are wages page to Florida residents. Also, a qualified production company specializing in digital media may not qualify for more than three projects each fiscal year.

- <u>Independent Florida film:</u> Must have a minimum $100,000 in qualified expenditures, but capped at $625,000, to be eligible for tax credits equal to 15 percent of its actual qualified expenditures. Other eligibility requirements are the same as in current law.

Comparison of Current Queues with Proposed Production Categories

Type of production	Current Law	SB 350
Films, TV shows, Documentaries	-- 15% of qualified expenditures equaling at least $625,000. -- Maximum incentive payment is $8 million.	-- 20% of qualified expenditures, equaling at least $500,000 -- No maximum.
Commercials and music videos	-- 15% of qualified expenditures, based on a minimum $100,000 per commercial or video <u>and</u> total qualified expenditures of $500,000. -- Maximum incentive payment is $500,000.	-- 10% of qualified expenditures, based on a minimum $100,000 per commercial or video <u>and</u> total qualified expenditures of $500,000. -- Maximum incentive tax credits of $500,000.
Digital Media	-- 10% of qualified expenditures equaling at least $300,000 -- Maximum incentive payment is $1 million per project.	-- 20% of qualified expenditures equaling at least $300,000 -- No maximum.
Fla. Independent Film	-- 15% of qualified expenditures of at least $100,000, but not more than $625,000. -- $93,750.	-- 15% of qualified expenditures of at least $100,000, but not more than $625,000. -- $93,750.

The application process for the new tax credit incentive program is very similar in its framework to that in existing law for the cash incentive. The applications are received and processed by OFE, and as a production winds down, it submits an audited report of qualified expenditures to OFE for its review. OFE submits its recommendations to OTTED, which determines and approves the final amount of tax credits (rather than the amount of cash incentive) to be awarded. What's new in SB 350 is that OTTED also must notify DOR that a certified production has met the requirements for a specific amount of tax credits, and if the production has decided to transfer those credits to another entity, and in what amount.

Both OTTED and DOR are given specific rulemaking authority to administer the tax credit incentive program. OTTED may adopt rules specifying requirements for the application and approval process, records need to substantiate the eligibility for the tax credits and to claim or transfer the credits, and marketing requirements for tax credit recipients. DOR's rules may include examination and audit procedures required to administer the program, and the manner and form of documentation required to claim or transfer the tax credits.

SB 350 also requires OFE to submit an annual report each October 1 to the Governor, the President of the Senate, and the Speaker of the House of Representatives that outlines the incentive program's return on investment and other economic benefits to the state.

The incentive program is repealed July 1, 2014, except that the 5-year tax credit carryforward provision will continue to be valid for the time specified.

Section 2 amends s. 220.02, F.S., which establishes the order in which a corporate income taxpayer may claim the film and entertainment industry tax credit. The film and entertainment industry tax credit is last in the list.

Section 3 amends s. 213.053, F.S., to allow DOR to share confidential tax information related to the film and entertainment industry tax credits with OTTED and OFE, which are bound by the same confidentiality requirements as DOR regarding the use of this information.

Section 4 amends s. 212.08(5), F.S., to create a sales and use tax credit for film or entertainment productions qualified and certified pursuant to s. 288.1254, F.S. The tax credits may be earned from July 1, 2009, through June 30, 2014. The credits are deducted from any sales and use taxes remitted, and must be claimed through electronic filing.

Section 5 adds a severability clause.

Section 6 specifies an effective date of July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article 18, Section VII of the Florida Constitution, excuses counties and municipalities from complying with laws requiring them to spend funds or to take an action unless certain conditions are met.

Subsections (b) and (c) of the provision prohibits, with some exceptions, the Legislature from "enacting, amending, or repealing any general law if the anticipated effect" is to reduce county or municipal aggregate revenue generating authority or aggregate percentage of state shared revenues as they exist on February 1, 1989. The principal exception to these prohibitions is if the Legislature passes such a law by a two-thirds vote of the membership of each chamber. Mandates affecting state-shared revenues are exempted if they affect enhancements enacted after February 1, 1989, state tax sources, if the law is enacted during a declared fiscal emergency, or when offsetting revenues are provided for.

Subsection (d) provides an exemption from this prohibition. Laws determined to have an "insignificant fiscal impact," which means an amount not greater than the average statewide population for the applicable fiscal year times 10 cents (which is $1.88 million for FY 09-10), are exempt.

The Revenue Estimating Conference (REC) determined by consensus that SB 350 will have a $9.6 million negative fiscal impact on local governments in FY 09-10, affecting both their revenue-generating authority and state-shared revenues. (See "Section V. Fiscal Impact Statement" below.) The bill's fiscal impact on local governments is estimated to increase by $700,000 over each of the following fiscal years. Consequently, SB 350 is not exempt from the constitutional restriction due to an insignificant fiscal impact.

To overcome this constitutional restriction, the Legislature must pass SB 350 by a two-thirds vote of the membership of each chamber.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

SB 350 creates an uncapped, transferrable tax credit for qualified film and entertainment productions. The program expires in 5 years, on July 1, 2014, but since tax credits have a maximum 5-year carry-forward, credits may be claimed on tax returns as late as July 1, 2019.

On February 6, 2009, the REC adopted by consensus an estimated $95.7 million impact on state revenues and $9.6 million in local-government revenues in FY 2009-2010, for a total fiscal impact of $105.3 million.[28] In the outer years, the estimated impact is $110.3 million state and $11 million local in FY 2010-2011; $117 million state and $11.7 million local in FY 2011-2012; and $123.3 million state and $12.4 million local in FY 2012-2013.

The REC also estimated that 80 percent of the tax credits would be taken against sales tax and 20 percent against corporate income tax.

B. Private Sector Impact:

The tax credits created in SB 350 are intended to encourage more film and entertainment productions made in Florida, whether by in-state or out-of-state production companies. A transferable, carryforward tax credit appears to eliminate the industry's concerns with timing and uncertainty inherent in the current cash reimbursement incentive program tied to Florida's fiscal year and legislative appropriations process.

C. Government Sector Impact:

SB 350 may increase the workload of DOR, OTTED, and OFE, but at this point, none is requesting additional FTEs or other capital outlay funds to implement the tax credit incentive program.

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[28] Available at http://edr.state.fl.us/conferences/revenueimpact/2009/pdf/impact0206.pdf. Begins on page 10.

VI. Technical Deficiencies:

DOR has indicated a number of provisions in SB 350 involving the agency's role in verifying certain tax credit documents and actions, where no time frame has been specified. DOR also is recommending that the bill's effective date be delayed until Jan. 1, 2010, to give it time to develop forms, reprogram computers, and notify taxpayers about the new program.

VII. Related Issues:

Similar to current law, SB 350 includes the "family friendly" incentive, worth an additional 2 percent. As drafted in the bill, and as expressed in current law, the "family friendly" incentive is available to all types of qualified productions. But by practice, OFE has been awarding it only to the general production queue that includes movies, television series, and documentaries, and to the Independent Florida Filmmaker queue. If the intent is to exclude commercials, music videos, and digital media from the "family friendly" extra incentive, then the language in the bill should be reworded to clarify that.

It is also unclear whether, under SB 350, commercials and music videos would be eligible for the additional "off-season" tax credit of 5 percent, based on its location within Section 1. Commercials and music videos are eligible under current law.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.